

SETH AND ALICE SWIFT

IBLA 89-289

Decided Jun3 16, 1989

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying appellants' petition for reinstatement of oil and gas lease WYW 108271.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

Pursuant to 30 U.S.C. | 188(b) (1982), when a lessee fails to pay the required rental on or before the anniversary date of the lease, on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law. The Secretary may reinstate the lease, pursuant to 30 U.S.C. | 188(c) (1982), if the full rental is paid within 20 days of the lease anniversary date, and the failure to timely pay was justifiable or not due to a lack of reasonable diligence. Mailing the rental payment on the date it is due will not establish reasonable diligence in the absence of a postmark on or before the lease anniversary date (or if the office is closed on the anniversary date, the next day the office is open) as required by the regulation at 43 CFR 3108.2-2(a), 53 FR 17357 (May 16, 1988).

APPEARANCES: Seth and Alice Swift, pro sese.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Seth and Alice Swift have appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated February 13, 1989, denying their petition for class I reinstatement of oil and gas lease WYW 108271, which terminated on its anniversary date, June 1, 1988, for failure to pay rental on or before that date.

The envelope in which appellants' rental was sent is postmarked June 3, 1988. A copy of appellants' rental check dated June 1, 1988, bears a Minerals Management Service datestamp of June 6, 1988.

In its decision denying appellants' petition for reinstatement of their lease, BLM determined that they had not met the requirements of 30 U.S.C. | 188(c) (1982) for class I reinstatement because the late payment was not justifiable and did not constitute reasonable diligence. BLM noted that although the check was dated June 1, 1988, the envelope transmitting the payment was not postmarked until June 3, 1988. BLM stated that when failure to pay the annual rental on time is due to negligence, forgetfulness, or inadvertence, the failure is not justifiable.

On appeal appellants assert that their negligence, forgetfulness, or inadvertence did not cause BLM to receive the payment late. Appellants explain that the Bloomington, Illinois, Post Office operates on a 24-hour schedule 7 days a week. Appellants state that they mailed their payment at the main Bloomington Post Office on the afternoon of June 1, 1988, before that afternoon's postmark time. Appellants state they do not know why their mailing was not postmarked until June 3, 1988.

Appellants assert that if they have not done what is required for reinstatement, it is because BLM's instructions were not clear. They add that they have invested \$12,000 in this lease and that they should not be denied their rights because of a technicality. Appellants submit that the lease should be reinstated either under class I or class II procedures.

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. | 188(b) (1982), provides that when the lessee fails to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law. Section 31(c), 30 U.S.C. | 188(c) (1982), provides that where a lease has terminated and the lessee has paid the full rental within 20 days after the lease anniversary date, the Department may, under certain circumstances, reinstate the lease, if the lessee shows that the failure to pay on or before the anniversary date was justifiable or not due to a lack of reasonable diligence. See 43 CFR 3108.2-2(a) (class I); Ann L. Rose, 92 IBLA 308 (1986); Melvin P. Clarke 90 IBLA 95, 97-98 (1985).

Regulation 43 CFR 3108.2-2(b) provides: "The burden of showing that the failure to pay on or before the anniversary date was justified or not due to lack of reasonable diligence shall be on the lessee." See also Ann L. Rose, supra at 310; Leo M. Krenzler, 82 IBLA 205, 207 (1984).

Departmental regulation 43 CFR 3108.2-1(a) (1987) formerly provided that a remittance which is postmarked by the U.S. Postal Service on or before the anniversary date and received in the proper office no later than 20 days after such anniversary date will be considered a timely filed remittance. The implication from the regulation was that the lease does not terminate in such a situation. Although that result is contrary to 30 U.S.C. | 188(b) (1982), which provides that a lease terminates by operation of law "upon failure of a lessee to pay rental on or before the anniversary date" (emphasis added), the Board has interpreted the above regulatory provision as providing a ground for satisfying the reinstatement

criterion of reasonable diligence. William R. Barthold, 98 IBLA 293, 294-95 (1987); William F. Branscome, 81 IBLA 235, 236-37 (1984); Anthony F. Hovey, 79 IBLA 148, 151 n.1 (1984) (A.J. Grant concurring).

BLM has recently amended its regulations to make clear that "reasonable diligence shall include a rental payment which is postmarked * * * on or before the lease anniversary date." 43 CFR 3108.2-2(a)(2), as amended, 53 FR 17357 (May 16, 1988). In order to take advantage of the date of mailing provision of these regulations, it is required that the envelope containing appellants' rental bear a legible postmark on or before the June 1, 1988, anniversary date. As noted above, however, the envelope bore a post-mark of June 3, 1988. Thus 43 CFR 3108.2-1(a) and 43 CFR 3108.2-2(a)(2), as amended, do not apply.

It is well established that mailing a rental payment after the lease anniversary date does not constitute reasonable diligence. Clarence Souser, 108 IBLA 59 (1989); William R. Barthold, supra at 295; Ann L. Rose, supra; Dena F. Collins, 86 IBLA 32, 35 (1985).

Appellants allege, although the record does not substantiate, that they mailed their rental payment on June 1, 1988, the anniversary date of the lease. However, reasonable diligence normally requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of mail. William R. Barthold, supra at 295; Ann L. Rose, supra at 310; Leo M. Krenzler, supra at 209; Anthony F. Hovey, supra at 149. Mailing a rental payment on the date it is due will not establish reasonable diligence in the absence of a postmark on or before the lease anniversary date (or if the office is closed on the anniversary date, the next day on which the office is open) as required by the regulation at 43 CFR 3108.2-2(a), 53 FR 17357 (May 16, 1988).

Appellants have failed to carry their burden of proving that their failure to timely pay the rental was not due to a lack of reasonable diligence and have alleged no basis for reinstatement based upon a justifiable standard. Therefore, their petition for reinstatement was properly denied.

Appellants contend they have met the requirements for reinstatement but if they have not, it is because BLM has failed to provide clear instructions. This contention is without merit. BLM's notice of termination dated August 16, 1988, clearly set forth all the terms and conditions of the law and regulations which must be met for both class I and class II reinstatement. Also, all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. || 1507, 1510 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

BLM properly advised appellants in the notice of termination that a reinstatement petition may be filed under 30 U.S.C. | 188(d), (e) (section 401 of the Federal Oil and Gas Royalty Management Act of 1982), which authorizes a class II reinstatement under certain conditions where the failure to tender payment in a timely manner was due to inadvertence.

However, appellants did not petition for reinstatement under that provision and we need not address that issue. See Edgar B. Stern, 86 IBLA 72, 75 (1985).

Appellants have neither justified their failure to timely submit their rental payment nor presented evidence that they exercised reasonable diligence. As Congress established that one of those elements must be present before reinstatement may be granted, the Department is without authority to reinstate the lease under the class I reinstatement procedures.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Wm. Philip Horton
Chief Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge